

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NEWSPRING MEZZANINE	:	
CAPITAL II, L.P.,	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 14-1706
v.	:	
	:	
HAYES, JR. et al.,	:	
Defendants.	:	

ORDER

This 12th day of November, 2014, Defendant Utilipath, LLC's Motion to Dismiss Counts I, II, III, IV, and V of Baxter McLindon Hayes, Jr.'s and Utilipath Holdings, Inc.'s Amended Cross-claim is **DENIED** for the reasons that follow:

- 1) With respect to Count I, taking the allegations of the Cross-claim Complaint collectively, Claimants have sufficiently pleaded a Rule 10b-5 claim. *Tellabs v. Makor Issues & Rights, Ltd.* 551 U.S. 308, 323–24 (2007).
- 2) With respect to Count II, regardless of whether Pennsylvania or Delaware law applies, which I am not deciding, the allegations suffice to plead fraudulent inducement and reliance.
- 3) With respect to Count IV, although the adequacy of the Cross-claim is a closer issue under *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), it is sufficient to withstand dismissal.
- 4) With respect to Counts III and V, the basis for denial of the Motion, without prejudice, is set forth in the accompanying Memorandum.

/s/ Gerald Austin McHugh
United States District Court Judge